REVIEWS OF BOOKS

GENERAL BOOKS AND BOOKS OF ANCIENT HISTORY

Essays in Legal History read before the International Congress of Historical Studies held in London, in 1913. Edited by PAUL VINOGRADOFF, F.B.A., Corpus Professor of Jurisprudence, University of Oxford. (Oxford: Oxford University Press. 1913. Pp. viii, 396.)

THIS volume contains a score of essays on topics of Roman, English, Germanic, Slavonic, canon, and comparative law. They are introduced by a presidential address in which Professor Vinogradoff discusses the continuity of cultural tradition and the value of comparative study in universal jurisprudence, and the causes (among which he considers particularly important the "social type") which produce variations in legal principles. It is especially interesting to note his critical attitude toward legal theory, which is frankly expressed.

Roman law is represented by four contributions. Professor Wenger sets forth in stimulating fashion the inadequacy of our present knowledge when tested by the questions suggested by new social viewpoints in the light of recently discovered Byzantine and Egyptian papyri. These have opened up a world of inquiries relative to social status, the relation of law and economic conditions and of debtor and creditor, the land, associational forms, etc. Private, administrative, and procedural law are all in need of revision. Professor Lenel offers an exceedingly acute and unorthodox discussion of the history and meaning of *heredis institutio.* His primary theses are these: that there was no instituted heir until shortly before Plautus; that the comitial testament was a pure legatary will; that under the oldest testamentary system liability for the decedent's obligations rested on legatees and usucapients *pro herede* to the extent of the things they respectively acquired (*i. e.,* the liability rested, as in early Grecian and Germanic law, on the heritage); that, when the *familiae emptor* was replaced by the *heres scriptus,* the unlimited personal liability of the *heres suus* in intestate succession was transferred to wills and imposed upon an artificial instituted heir, partly in order to preserve the advantages of the *familiae emptor* as an executor and partly in order to spare creditors the inconveniences of limited real liability; the effectiveness of the will depending thenceforth on the *heredis institutio,* as formerly on the *familiae mancipatio.* This theory, which makes the earliest stage of the Roman law one of specific legacies, as in Grecian and Germanic law, leaves the *heredis institutio* as a feat of developed juristic technic,

and not an anomalous product of primitive customary law. Professor Riccobono's essay, "Dalla 'Communio' del Diritto Quiritario alla Comproprietà Moderna", is much the longest of the volume. It is an elaborate examination of the classical and Justinian texts. The author finds that the early and classic form of joint property rested upon the complete independence of the individual co-owners, the *dominium ex jure Quiritum* existing unfettered in each; there was no undivided ownership by a group, whether with or without juristic personality. This system, however, was profoundly altered in the Digest, the Quiritary principles being tempered by ideas of co-operation in the common interest, each co-owner acquiring the power to constrain all or to restrain his fellow "without regard to the interests" of any individual co-owner—*i. e.*, by an appeal to law. The construction of the essay is permeated with foreseen conclusions and some generalizations might be debated, but it unquestionably is of great and original value.

Of the three essays dealing with Germanic law the most widely interesting will be Professor Caillemer's on "Les Idées Coutumières et la Renaissance du Droit Romain dans le Sud-Est de la France". He rejects Ficker's theory that the Burgundian law survived in this region, and shows that there existed here, on the contrary, a vigorous customary law which made slow and difficult the spread of Roman ideas, notwithstanding that the earliest renascence in France of the classic law occurred precisely in this region. He discusses the divergencies of the native from the Roman system in the conceptions of real rights in immovables, of even-handed contracts (*à titre onéreux*), of real and personal suretyship, of rights of co-alienation (*laüdatio*); and, especially, in the history (fully outlined) of dowry and dower. Professor Schreuer discusses very briefly the gods and the dead as bearers of rights in Germanic law, and Professor Taranger deals exhaustively with the meaning in old Norwegian law of "óðal" (inherited or family, as distinguished from purchased, lands) and "skeyting" ("transfer of óðal-right in óðal-land" according to the author, "transfer of property in land" according to the current views which he combats).

Public law is represented by a paper of the late Professor Esmein on the influence in France of the maxim "princeps legibus solutus est", which was literally understood and applied, whereas in Roman law it had the limited technical meaning of discretionary self-exemption from the private and police law. Dr. A. Lappo-Danilevski describes the change in the conception of the state in Russia, in the seventeenth and eighteenth centuries, from that of a predominantly theocratic to a predominantly secular institution. It is curious that a leading part in the dissemination of foreign literature was played by university courses in theology dealing *de iure et iustitia.*

Students of constitutional history will be interested in Professor Hübner's account of the constitution drafted in the Frankfort Parlia-

ment by the Seventeen Selectmen. It is based on minutes of the meetings, hitherto unknown, left by Droysen. There are also two studies of the principle of majority rule: one by Dr. Konopczynski dealing with the Polish *liberum veto,* the antithesis of that principle, and one by Professor Gierke. The contrasts between these essays is remarkable. Dr. Gierke's history is full of references and implications of borrowing and interaction. Dr. Konopczyński declares that the principle "ne fut octroyé nulle part, ni emprunté à des étrangers", etc. It is worth reflecting on when reading the two essays.

Reference must be made to the papers on English law: Dr. Odgers's history of the Inns of Court (but with no contribution to the theory or history of associations); Professor Goudy's discussion of the maxims *actio personalis moritur cum persona* (which never meant what it says and which he finds entered the law owing to Bracton's misunderstanding of the Roman law) and *cujus est solum ejus est usque ad coelum*; Dr. Holdsworth's views of Coke's influence; and Dr. Hazeltine's restatement of the researches of himself and other scholars in the early enforcement of legal remedies in the common-law courts. There is no space to consider them in detail.

F. S. PHILBRICK.

Deliverance: the Freeing of the Spirit in the Ancient World. By HENRY OSBORN TAYLOR. (New York: The Macmillan Company. 1915. Pp. vii, 294.)

MR. TAYLOR'S authoritative and penetrating interpretations of the spiritual content of history promote historical studies, enrich philosophical insight, and add to the pleasure of those who accept erudition only in attractive literary form. To consider them only as contributions to historical knowledge is a too limited and one-sided procedure, and in the case of his most recent work the limitation is an embarrassment. "This little book which is not intended to be learned" (p. 77) adds not to the world's erudition but to the world's wisdom. The content of it is historical but the end in view is meditation on the spiritual problem of human life. For the book springs from such reflections as visit a man when he is alone with himself and is asking by what kind of endeavor he may find "his working satisfaction", "his freedom to fulfil his nature, his release from fear, his actual adjustment with life and the eternal ways". In particular such reflection seeks release from the anxiety of the thought of death. How have great souls won their serenity and composure of spirit, their triumph over the world? It is in this quest that Mr. Taylor surveys ancient philosophies and religions, not to give any such ample account of them as belongs to a history of thought, but to exhibit in Confucius, Lao Tzu, Zarathushtra, Hebrew prophets, Greek thought, Jesus, Paul, Augustine, the essential conception which gave them "singleness of spiritual foundations" bringing into accord intellectual conceptions and the heart's devotion.